THE HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NO. 4193 of 1993

AND

WRIT PETITION NO. 13898 OF 2004

WRIT PETITION NO. 4193 of 1993

Between:

N. Venkataiah

....Petitioner

A N D

The Secretary, A.P. Residential Educational Institutions Society, Abids, Hyderabad and Others ...Respondents

Advocate for Petitioner : Sri P.V.S.S.S. Rama Rao

Advocate for Respondents No.1 & 2 : Sri Vijaya Bhaskar Moola

Advocate for RespondentNo.3 :Government Pleader for Services-II

WRIT PETITION NO. 13898 of 2004

Between:

N. Venkataiah

....Petitioner

A N D

Vice-Chairman, A.P.R.E.I. Society & Ex Officio Secretary to Government School Education Department, Government of Andhra Pradesh Hyderabad & others. ...Respondents

Advocate for Petitioner : Sri K.B. Ramanna Dora

Advocate for Respondents No.1 & 2 : Government Pleader for Services-II

Advocate for Respondents No.3 & 4 : Sri Vijaya Bhaskar Moola

February 17, 2006

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JUDGMENT

Per G.S. Singhvi, C.J.

These two writ petitions filed by Sri N. Venkataiah are reflective of the manoeuvring by an employee, who has been able to misuse the process of the Court to his advantage, by first claiming that he is an employee of Andhra Pradesh Residential Educational Institutions Society (for short 'the Society') and then taking the stand that he is an employee of the State Government and the Society does not have the jurisdiction to punish him.

In writ petition No. 4193 of 1993, the petitioner has prayed for issuance of a direction to the respondents to absorb him in the service of the Society. Initially, he did not implead the State Government or its functionaries as a party to the writ petition. But after 11 years, he filed W.P.M.P.No.20367 of 2004 and succeeded in persuading the Court to grant him leave to implead Director of Treasuries and Accounts, Government of Andhra Pradesh as respondent No.3. In Writ Petition No.13898 of 2004, he has prayed for issuance of a writ in the nature of mandamus for directing the non-petitioners to pay him pensionary benefits. In the second petition also he did not implead the State Government or its functionaries as party, but later on became wise and sought permission of the Court to implead the Government of Andhra Pradesh and Director of Public Institutions as respondent Nos.3 and 4.

Before instituting the two aforementioned petitions, the petitioner had filed Writ Petition No. 16918 of 1992 questioning the legality of orders dated

May 20, 1991, December 13, 1991 passed by the Vice-Chairman of the Society and Chairman of the Society respectively for imposing penalty of stoppage of one increment without cumulative effect.

It is borne out from the order sheets of Writ Petition No.4193 of 1991 that the same was listed for hearing before the learned Single Judge along with writ petition No.16918 of 1992. On June 17, 2004, the learned Single Judge passed orders for posting the matter for judgment in the next week, but the matter was not decided though writ petition No.16918 of 1992 was allowed vide order dated July 8, 2004 and the punishment imposed by the competent authority of the society was quashed on the ground that the writ petitioner is not an employee of the Society.

Having noticed the preliminaries, I now advert to the facts which have bearing on the prayer made in the two petitions.

The petitioner joined the government service as Lower Divisional Accountant on December 4, 1967 in the Directorate of Treasuries and Accounts. After about nine years, his services were placed at the disposal of the Society on deputation with effect from 08.06.1976. The term of the deputation was extended from time to time. The term of last extension ended on June 14, 1981, but he continued to work in the service of the Society till order dated March 2, 1988 was issued by the Directorate of Treasuries for his repatriation to the parent department.

The petitioner challenged his repatriation to the parent department in Representation Petition No.1430 of 1988 filed before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'The Tribunal'). The same was heard along with representation petition No.1468 of 1988 filed by Sri M.V. Bhaskara Sharma and disposed of by the Tribunal by a common order on January 23, 1989. In regard to the petitioner's claim that he is an employee of the Society and the Directorate of Treasuries and Accounts does not have the power or jurisdiction to repatriate him to the parent department, the Tribunal observed as under:

> "The petitioners service were placed at the disposal of Respondents No.2 and3, the Chairman and Secretary of the Society respectively by respondentno.1 in the proceedings dated

08.06.1976 initially for one year and later extended for a period of 5 years by the Government through G.O.Rt.No.1570 (Fin. & Plg.) Fw.Admn-I) dated 10.11.1980. Before the expiry of 5 years, the Respondent No.1 issued proceedings dated 23.05.1981 directing repatriation of the petitioners to his parent department w.e.f. 14.06.1981. The respondent No.3 informed respondentNo.1 through letter dated 27.6.81 that the petitioner has applied for absorption in Society service and the option exercised by the petitioner has been accepted by the Society. In the meantime, the petitioner was promoted as Superintendent in the Society and the said fact was informed to the RespondentNo.1 by the respondent No.3 through letter dated 14.10.1981. No objection was taken by the respondent No.1 and the petitioner was absorbed by the respondent No.2 and the petitioner entered in the service of the Society for more than seven years. He was later promoted as Accounts Officer by the society. Thus, admittedly, the petitioner is in the Service of the Society since more than twelve years. He has exercised his option for absorption in the Society service which has been accepted by the Society with the knowledge of the Respondent No.1 the parent department. Under such circumstances, the parent department ceases to have any control over the petitioner and the impugned order of repatriation are without jurisdiction."

In view of the aforementioned order, the petitioner was allowed to continue in the service of the Society till he attained the age of superannuation on October 31, 2002.

In the meanwhile, the petitioner filed Writ Petition No.4193 of 1993 for issuance of a direction to the respondents to absorb him in the services of the Society. After 11 years, he filed Writ petition No.13898 of 2004 for directing the respondents in that petition to pay him the retrial benefits.

I have heard learned counsel for the parties and carefully perused the record. I have also gone through order dated July 8, 2004 passed by the learned Single Judge in writ petition No.16918 of 1992.

In my opinion, both the writ petitions are liable to be dismissed only on the ground that the petitioner has not impleaded the Society as a party respondent. In the first petition, he has impleaded the Secretary and Vice-Chairman of the Society as party respondents. In the second petition he has impleaded the Vice-Chairman and Chairman of the Society as party respondents. The Society of which the petitioner claims to be an employee and

in whose service he is seeking absorption is a juridical person. The Chairman, Vice-Chairman and Secretary are only its functionaries and officers of the Society. They cannot be equated with the Society as a body corporate. Therefore, without impleading the Society as party respondents, the petitioner is not entitled to relief in terms of the prayer made. This view of mine is based on the judgment of the Supreme Court reported in **Ranjeet Mal v. General Manager, Northern Railway, New Delhi**. In that case, the writ petitioner has challenged the order of punishment passed by the disciplinary authority, who happened to be an officer of Northern Railway. The appeal and the revision filed by him against the order of punishment were dismissed by the superior authorities including the General Manager, Northern Railways. In the writ petition filed by him under Article 226 of Constitution of India, the petitioner impleaded General Manager, Northern Railway and other officials as party respondents. On behalf of the respondents, an objection was taken to the maintainability of the writ petition on the ground that Union of India had not been impleaded as party respondent. A learned Single Judge upheld the objection and dismissed the writ petition. The Division Bench approved the view of the Single Bench. While dismissing the appeal, the Supreme Court observed:

> "The Union of India represents the Railway Administration. The Union carries administration through different servants. These servants all represent the Union in regard to activities whether in the matter of appointment or in the matter of removal. It cannot be denied that any order which will be passed on an application under Article 226 which will have the effect of setting aside the removal will fasten liability on the Union of India, and not on any servant of the Union. The General Manager or any other authority acting in the Railway Administration is as much a servant of the Union as the petitioner was. Therefore, the Union of India is a necessary part to the proceedings."

I would have dismissed the writ petitions on the afore-mentioned ground, but keeping in view the fact that one of the petitions has been pending for almost 13 years and no objection has been raised on behalsf of the respondents to its maintainability on the ground of non-impleadment of the necessary party, I refrain from doing so.

Adverting to the merits of the case, I find that much before the Tribunal had pronounced on the status of the petitioner as an employee of the Society

and cessation of his relationship of master and servant with the State Government, the Society had taken the decision to absorb him in its employment. This was reflected in letter ROC No.272/A1/76, dated June 27, 1981 sent by the Secretary of the Society to the Director of Treasuries and Accounts of Andhra Pradesh, Hyderabad. The Tribunal also concluded that having worked for more than 12 years and exercised option for absorption of service in the Society, the petitioner will be ceased to be an employee of the department.

In the course of hearing, I enquired from the learned counsel representing Society whether order passed on March 22, 1989 by the Tribunal was challenged by filing writ petition under Article 226 of Constitution of India or an appeal under Article 136 of Constitution of India. To this, learned counsel replied in the negative. Therefore, there is no escape from the conclusion that by virtue of the order passed by the Tribunal, the petitioner acquired a right to be treated as an employee of the Society for all purposes and failure of the latter to pass a formal order for his absorption is inconsequential.

It is true that the petitioner had successfully persuaded the learned Single Judge to invalidate the order of punishment passed by the Society, but this unwarranted attempt on his part cannot be treated as sufficient to deny him the benefit of more than 35 years of service. In my view, the petitioner will be deemed to have been absorbed in the service of the Society in furtherance of the decision taken some time before June, 1981 and he is entitled to draw retiral benefits admissible to the employees of the Society.

Learned counsel for the Society points out that two departmentssal enquiries involving financial misfeasance were initiated against the petitioner on July 29, 1996 and August 5, 2000. According to him, both the enquiries are pending. Learned counsel for the petitioner contests this position. According to him, both the enquiries have been dropped.

I have thoughtfully considered this issue. Since the parties have not produced relevant documents, it is not possible for the Court to record a definite finding whether or not enquiries were initiated against the petitioner and whether the same are pending as on the date and I feel that ends of justice would be met if the Society is directed to release the retrial dues payable to the

petitioner strictly in accordance with the rules.

In the result, the writ petitions are disposed of with the following directions:

(a) the petitioner will be deemed to have been absorbed in the service of the Society with effect from June, 1981;

(b) The petitioner is entitled to receive retiral benefits like pension, gratuity, leave encashment if any etc. admissible to the employees of the Society. If departmental enquiries are pending against the petitioner, then the Society shall release pension and other benefits subject to the contrary provision if any contained in the rules. If the rules regulating conditions of service of the employees of the Society contain a prohibition against the release of gratuity as in the case of the Government employees, the petitioner shall not be entitled to the same till the conclusion of departmental proceedings. Likewise if the petitioner is an accused in any of the criminal cases instituted against him, then he shall not be entitled to receive gratuity till conclusion of the trial.

(c) If no departmental enquiry is pending against the petitioner and he is not accused in any criminal case, then he shall be entitled to receive all retiral benefits; and

(d) The Society is directed to calculate the retiral benefits payable to him and make payment within a period of three months from today.

G.S. SINGHVI, CJ

February 17, 2006

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